

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 231.

THE UNITED STATES, APPELLANT,

vs.

BERNARD L. MORAN.

APPEAL FROM THE COURT OF CLAIMS.

FILED DECEMBER 22, 1922.

(28614)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 231.

THE UNITED STATES, APPELLANT,

vs.

BERNARD L. MORAN.

APPEAL FROM THE COURT OF CLAIMS.

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Court of Claims.

1
BERNARD L. MORAN
v.
THE UNITED STATES. } No. 34228.

I. Petition and amended petition.

Filed April 18, 1921.

On November 26, 1919, the plaintiff filed his original petition.

On April 18, 1921, by leave of court, the plaintiff filed his amended petition, which is as follows:

*Amended petition.**To the Honorable the Court of Claims:*

The claimant, Bernard L. Moran, respectfully represents:

I. The claimant enlisted in the United States Revenue Cutter Service, the name of which has since been changed to United States Coast Guard, on April 8, 1895, serving successively as boy, ordinary seaman, seaman, coxswain, quartermaster and master at arms, having been for about sixteen years last passed master at arms.

He was placed on disability retirement December 1, 1916. He was recalled to active service as master at arms August 1, 1917, and has ever since remained on active duty in that capacity.

II. The duties of a master at arms in the Coast Guard are in all respects similar to and corresponding with those of a chief master at arms in the Navy.

III. The claimant since the 6th day of April, 1917, or since the date when the act hereinafter referred to became effective, has been and still is entitled to receive a rate of pay corresponding with and equal to that of a chief master of arms in the Navy.

2 IV. The Commandant of the Coast Guard on the 5th day of June, 1917, by letter officially addressed to the Chief of the Bureau of Navigation of the Navy Department, submitted a tabular statement, showing the several grades and ratings of warrant officers, petty officers, and enlisted men of United States Coast Guard, and opposite thereto the several corresponding grades and ratings of the Navy, the tabulation being arranged on the basis of the duties and responsibilities of the several ratings.

In this statement a master at arms in the Coast Guard was set down as corresponding in duties to the chief master at arms in the Navy and entitled to the same pay.

In the table adopted by the Navy Department this and other recommendations were ignored and masters at arms in the Coast Guard were ranked with masters at arms, first class, in the Navy, thereby giving to all masters at arms in the Coast Guard no benefit whatever of the Navy rates of pay, the rate of pay of a master at arms, first class, in the Navy being lower than that of a master at arms in the Coast Guard.

The same is true of the other petty officers of the Coast Guard who were rated as corresponding to petty officers in the Navy receiving lower rates of pay than themselves, whereby no effect was given to the provisions of law hereinafter referred to for corresponding rates of pay of petty officers of the Coast Guard to those of corresponding grades or ratings in the Navy.

V. The base pay of a master at arms in the Coast Guard was prior to the 6th day of April, 1917, \$60 a month. The base pay of a chief master at arms holding a permanent appointment in the Navy, was prior to that date and still is \$77 a month, and to each of said rates of pay must be added the credits for previous service in the
3 Coast Guard or Navy, continuous service pay on reenlistment, and also from June 1, 1917, increase of pay in time of war and for six months thereafter.

VI. The claimant therefore claims pay at the rate allowed by law and regulations to a chief master at arms in the U. S. Navy, from April 6, 1917, to Dec. 31, 1918, wherever higher than that allowed by law and regulations pertaining to the Coast Guard to a master at arms in said Coast Guard, less all payments previously made to him on a different theory of the law.

VII. This claim has not been presented to the accounting officers of the Treasury for the reason that the Comptroller of the Treasury on the 10th day of September, 1919, in a decision in the case of another petty officer held that he would not make an independent reexamination of the corresponding rates of pay between the Coast Guard and the Navy, whereby it became useless to present this claim.

VIII. This claim is based upon the act of May 22, 1917, sec. 15 (40 Stat. 87) providing "that during the continuance of the present war, warrant officers, petty officers and enlisted men of the United States Coast Guard shall receive the same rates of pay as are or may hereafter be prescribed for corresponding grades or ratings and length of service in the Navy."

Also that part of section 15 of said act which provides for an increase of \$6 a month to all enlisted men in the Navy whose base pay is \$45 or more a month.

Also section 13 of the same act (40 Stat. 87): "Nothing contained in this act shall operate to reduce the rank, pay or allowances
4 that would have been received by any person in the Navy, Marine Corps, or Coast Guard except for the passage of this act."

Also joint resolution of April 6, 1917 (40 Stat. 1), declaring a state of war with Germany.

No other action has been had on said claim in Congress or by any of the departments; no person other than the claimant is the owner thereof or interested therein; no assignment or transfer of this claim, or of any part thereof or interest therein, has been made; the claimant is justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets; the claimant has at all times borne true allegiance to the Government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government. The claimant is a citizen of the United States. And the claimant claims six hundred dollars (\$600).

KING & KING,
Attorneys for Claimant.

DISTRICT OF COLUMBIA, ss:

George A. King, being duly sworn, deposes and says: I am one of attorneys for the claimant. I have read the above-amended petition and the matters therein stated are true, to the best of my knowledge and belief.

GEORGE A. KING.

Subscribed and sworn to before me this 18th day of April, 1921.

[SEAL.]

MAY LOU H. BYINGTON,
Notary Public, D. C.

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II. *General traverse.*

No demurrer, plea, answer, counterclaim, set-off, claim of damages, demand, or defense in the premises having been entered on the part of the defendant, a general traverse is entered as provided by rule 34.

III. *Argument and submission of case.*

On April 18, 1921, this case was argued and submitted on merits by Mr. George A. King, for the plaintiff, and by Mr. John G. Ewing, for the defendant.

6 IV. *Findings of fact and conclusion of law. Entered May 16, 1921.*

This case having been heard by the Court of Claims the court, upon the evidence, makes the following:

Findings of fact.

I.

The plaintiff, Bernard L. Moran, enlisted as a boy in the U. S. Coast Guard April 8, 1895, and reenlisted successively on expiration

of each succeeding term of enlistment and was rated successively ordinary seaman, coxswain, quartermaster, and from May 1, 1903, master at arms, at which rating he continued to serve until November 30, 1916, when he was retired for physical disability.

August 1, 1917, he was recalled to active duty and continued on active duty until December 31, 1918, and later.

II.

From April 6, 1917, date of declaration of war with Germany, and until the institution of this suit, there were in the U. S. Coast Guard masters at arms and assistant masters at arms, the former being the higher.

Master at arms was the highest rating in the enlisted personnel of the Coast Guard. His duties were to preserve order on ship board. He was designated as chief of police of the ship. He also had charge of small boats on rescue work, and conducted drills, etc. In addition he performed the duties of chief commissary steward in handling the rations of the crew. An assistant master at arms performed the duties of a master at arms in his absence, and assisted the master at arms in the preservation of order and policing the ship.

III.

In the Navy there were during the same period master at arms, third, second, and first class, and above them a grade known as chief master at arms.

The duties of the chief master at arms in the Navy were the same as those of a master at arms in the Coast Guard, except that he was usually relieved of the work in connection with the rations by a chief commissary steward. A master at arms, first, second, or third class, acted as his assistant.

7 The duties of a master at arms in the Coast Guard corresponded in all respects to those of chief master at arms in the Navy.

IV.

Shortly after the passage of the act of May 22, 1917, sec. 15 of which provides that petty officers, etc., of the Coast Guard shall receive the same rates of pay as are or may hereafter be prescribed for corresponding grades or ratings and length of service in the Navy, the Captain Commandant of the Coast Guard submitted, June 5, 1917, to the Chief of the Bureau of Navigation of the Navy Department a tabular statement showing the several grades and ratings of warrant officers, petty officers, and enlisted men of the Coast Guard, and stated opposite thereto the grades or ratings in the Navy to which the Coast Guard grades or ratings correspond. These tabular statements were arranged on the basis of the duties and responsibilities of the several ratings.

In this table an assistant master at arms, U. S. Coast Guard, was put down as corresponding to a master at arms, first class, in the Navy, and a master at arms as corresponding to a chief master at arms in the Navy.

Thereafter the Secretary of the Navy, October 10, 1917, issued a general order giving the corresponding grades or ratings in which an assistant master at arms in the U. S. Coast Guard was said to correspond to a master at arms, second class, in the Navy, and a master at arms in the Coast Guard to a master at arms, first class, in the Navy.

The tabular statement of corresponding ratings as submitted by the Commandant of the Coast Guard was in many other respects changed by the Navy Department.

This action was followed by a circular letter from Coast Guard Headquarters, dated January 3, 1918, carrying out the order of the Secretary of the Navy and showing among other things the comparative rates of pay for petty officers of the Coast Guard and for those of the Navy to whom the Navy Department general order of October 10, 1917, aforesaid, had declared such petty officers to correspond.

According to this statement the pay of all petty officers, and nearly all enlisted men, in the Coast Guard, was already higher than the pay in the Navy, thus giving to the petty officers of the Coast Guard no benefit of section 15 of the act of May 22, 1917.

V.

8 Under the act of May 18, 1920, sec. 8, providing that the grades and ratings of warrant officers, chief petty officers, petty officers, etc., in the Coast Guard shall be the same as in the Navy, etc., it was provided by an order issued from Coast Guard Headquarters, bearing the same date as the act:

"Petty officers and other enlisted persons are transferred as of from the ratings they held under the old classification of ratings and are hereby permanently appointed to the ratings provided in the new classification, as follows:

Old rating.	New rating.
Masters at arms.	With three years' service, or more, as masters at arms, to be chief commissary stewards.
Masters at arms.	With less than three years' service as masters at arms, to be commissary stewards."

VI.

The plaintiff during the time covered by this claim, which comes down to December 31, 1918, was paid at the rate due at old Coast Guard rates of pay to a master at arms in the Coast Guard, that

pay being higher than that of a master at arms, first class, in the Navy, which was held by the Navy Department as aforesaid to be the corresponding rating.

If paid during the entire period from August 1, 1917, when he was placed upon active duty, to December 31, 1918, as a chief master at arms in the Navy he would have received -----

\$1,790.50

The total pay received by him during that period was--- 1,530.00

Difference ----- 260.50

Conclusion of law.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the plaintiff is entitled to recover. It is therefore adjudged and ordered that the plaintiff recover of and from the United States the sum of two hundred and sixty dollars and fifty cents (\$260.50).

Graham, J., dissents.

(See case of Allen, No. 34235, decided May 16, 1921.)

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V. Judgment of the court.

At a Court of Claims held in the city of Washington on the sixteenth day of May, A. D. 1921, judgment was ordered to be entered as follows:

The court, upon due consideration of the premises, find in favor of the plaintiff, and do order, adjudge, and decree that Bernard L. Moran, as aforesaid, is entitled to recover and shall have and recover of and from the United States the sum of two hundred and sixty dollars and fifty cents (\$260.50).

BY THE COURT.

VI. Proceedings after entry of judgment.

On July 15, 1921, the defendant filed a motion for a new trial. Said motion was overruled by the court on October 10, 1921.

VII. Defendant's application for and allowance of appeal to the Supreme Court.

From the judgment rendered in the above-entitled cause on the 10th day of October, 1921, in favor of the claimant, the defendants, by their Attorney General, on the 21st day of November, 1921, make application for, and give notice of, an appeal to the Supreme Court of the United States.

ROBERT H. LOVETT,
Assistant Attorney General.

Filed November 21, 1921.

Ordered: That the above appeal be allowed as prayed for.

BY THE COURT.

November 21, 1921.

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Court of Claims.

BERNARD L. MORAN,
vs.
THE UNITED STATES. } No. 34228.

I, F. C. Kleinschmidt, Assistant Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case; of the findings of fact and conclusion of law filed by the court; of the judgment of the court; of the defendant's application for and the allowance of an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington City this twenty-third day of November, A. D. 1921.

[SEAL.]

F. C. KLEINSCHMIDT,
Assistant Clerk Court of Claims.

(Indorsement on cover:) File No. 28614. Court of Claims. Term No. 231. The United States, appellant, vs. Bernard L. Moran. Filed December 23d, 1921. File No. 28614.

In the Supreme Court of the United States

OCTOBER TERM, 1922.

UNITED STATES OF AMERICA, APPELLEE,	} No. 231.
v.	
BERNARD L. MORAN.	

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT.

Bernard L. Moran was a retired master-at-arms in the United States Coast Guard on the date of the declaration of war with Germany, April 6, 1917, with a total active service as master-at-arms of more than three (3) years. On August 1, 1917, claimant was recalled to active duty and continued on active duty until December 31, 1918, and later (R. 4).

Under the Act of January 28, 1915 (38 Stat. 800), the Coast Guard became subject to the jurisdiction and orders of the Secretary of the Navy, which act provides as follows:

That there shall be established in lieu of the existing Revenue Cutter Service and the Life-Saving Service, to be composed of those two

existing organizations, with the existing offices and positions and the incumbent officers and men of those two services, the Coast Guard, which shall constitute a part of the military forces of the United States and *which shall operate under the Treasury Department in time of peace and operate as a part of the Navy, subject to the orders, of the Secretary of the Navy, in time of war*, or when the President shall so direct: When subject to the Secretary of the Navy in time of war the expense of the Coast Guard shall be paid by the Navy Department: *Provided*, That no provision of this Act shall be construed as giving any officer of either the Coast Guard or the Navy, military or other control at any time over any vessel, officer or man of the other service except by the direction of the President. (Italics supplied.)

The Act of May 22, 1917, entitled "An Act to temporarily increase the commissioned and warrant and enlisted strength of the Navy and Marine Corps, and for other purposes" (40 Stat. 84), provides:

Section 13. Nothing contained in this act shall operate to reduce the rank, pay or allowance that would have been received by any person in the Navy, Marine Corps, or Coast Guard, except for the passage of this Act.

Section. 15. That commencing June first, nineteen hundred and seventeen, and continuing until not later than six months after the termination of the present war, all enlisted men of the Navy of the United States in active service whose base pay does not exceed

\$21 per month shall receive an increase of \$15 per month; those whose pay is over \$21 and does not exceed \$24 per month, an increase of \$12 per month; those whose pay is over \$24 and less than \$45 per month, an increase of \$8 per month; and those whose pay is \$45 or more per month, an increase of \$6 per month

* * * *Provided*, That during the continuance of the present war, warrant officers, petty officers and enlisted men of the United States Coast Guard shall receive the same rates of pay as are or may hereafter be prescribed for corresponding grades or ratings and length of service in the Navy.

Pursuant to the above Section 15 the Commandant of the Coast Guard, on June 5, 1917, submitted to the Chief of the Bureau of Navigation, Navy Department, a comparative table of grades and ratings (R. 4), and in said table set forth Chief Master-at-Arms in the Navy as the corresponding grade and rating to the Master-at-Arms in the Coast Guard (R. 5).

On October 10, 1917, the Secretary of the Navy issued General Order No. 329 (R. 5) in which was set forth a table of corresponding grades and ratings of the Coast Guard and Navy in which master-at-arms in the Coast Guard corresponded to master-at-arms, first class, in the Navy, (R. 5).

Under this General Order No. 329 claimant, in accordance with the provision of Section 15, Act of May 22, 1917, was paid at the rate previously had in the Coast Guard, since a master-at-arms, first class,

in the Navy would receive less than a master-at-arms in the Coast Guard, but such smaller payment was prevented by Section 13 above. The claimant now sues for the difference between the amount paid him as master-at-arms, first class, and the amount he would have received if he had been rated as Chief Master-at-Arms in the Navy.

QUESTION INVOLVED.

The real question involved in this case is whether the determination of the Secretary of the Navy as to the corresponding grades and ratings of the Coast Guard and the Navy was an administrative act or a usurpation of legislative power.

ARGUMENT.

The question of law in the present case is the same as that involved in the case of *United States of America, Appellee, v. Will J. Allen, No. 232*, and the brief presented in the Allen case is submitted on behalf of the Government in this case.

JAMES M. BECK,
Solicitor General.

A. T. SEYMOUR,
Assistant to the Attorney General.

FEBRUARY, 1923.



Opinion of the Court.

UNITED STATES *v.* MORAN.

APPEAL FROM THE COURT OF CLAIMS.

No. 231. Argued March 1, 1923.—Decided March 12, 1923.

Decided on the authority of *United States v. Allen*, ante, 317.
56 Ct. Clms. 492, affirmed.

APPEAL from a judgment of the Court of Claims awarding a sum as additional pay to a master-at-arms in the Coast Guard.

Mr. Assistant to the Attorney General Seymour, with whom *Mr. Solicitor General Beck* was on the brief, for the United States.

Mr. George A. King, with whom *Mr. William B. King* and *Mr. George R. Shields* were on the brief, for appellee.

MR. JUSTICE MCKENNA delivered the opinion of the Court.

Action for \$600.00. Judgment for \$260.50. The case was submitted with *United States v. Allen*, just decided, ante, 317, depends upon the same statute and presents the question of the claim of a master at arms in the Coast Guard to receive pay at the rate allowed by the statute to a chief master at arms in the Navy, less all pay previously received in the lower grade.

Moran enlisted in the United States Revenue Cutter Service, the name of which has since been changed to the United States Coast Guard, as an ordinary seaman and attained the rank of master at arms, the duties of which corresponded in all respects to the duties of chief master at arms in the Navy.

Moran, therefore, since April 6, 1917, has been, and is, entitled to receive a rate of pay corresponding to that of a chief master at arms in the Navy. Had he been so paid, and as required by the Act of May 22, 1917, c. 20, 40 Stat. 84, he would have received during the entire period from August 1, 1917, when he was placed on active duty, to December 31, 1918, the sum of \$1,790.50. The pay received by him, however, was \$1,530.00, leaving a balance due of \$260.50. For this sum the Court of Claims gave judgment.

The findings of the court sustain its action, and on the authority of the *Allen Case* we affirm the judgment.

Affirmed.